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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD DEON JACKSON,

Defendant and Appellant.

B248063

(Los Angeles County
Super. Ct. No. BA393122)

APPEAL from a judgment of the Superior Court of Los Angeles County, Monica Bachner, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner and Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Richard Deon Jackson, appeals from the judgment entered following a jury trial which resulted in his conviction of two counts of second degree robbery (Pen. Code, § 211),¹ during the commission of which he personally used a firearm (§ 12022.53, subd. (b)). The trial court sentenced Jackson to 13 years in prison. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Facts.

a. The prosecution's case.

At approximately 7:00 p.m. on the evening of January 22, 2012, Julio Adrian Hernandez Luna² was sitting in his Toyota Corolla parked on Harcourt Boulevard in the residential area near the intersection of Harcourt and Westhaven Avenue in Los Angeles. Hernandez had been visiting his cousin, Alberto Hernandez. When Hernandez decided to leave Alberto's home, Alberto walked with Hernandez to his car.³ Hernandez's car door was open and, as the two men were talking, a dark-colored car with darkened windows approached and stopped next to the Corolla. "[A] young man came out from inside . . . the car" and stood up until approximately half his body was outside the car's sunroof. When the man told Hernandez and Alberto to give him their wallets, Hernandez at first ignored him. Hernandez told Alberto he believed someone was talking to him. However, when Hernandez then looked at the man, who was approximately three feet away and pointing a gun at him, Hernandez decided to give to the man the approximately \$80 he had in his wallet.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Although one of the victims is initially referred to as Julio Adrian Hernandez Luna, he is subsequently referred to as Julio Adrian Hernandez.

³ We refer to Hernandez's cousin, Alberto Hernandez, as Alberto not out of any disrespect but to avoid confusion.

Alberto, who had been facing a wall when the dark-colored car first pulled up, turned around to see Jackson, who was lit by a street lamp. Alberto could see that Jackson was wearing a white T-shirt, leaning out of the sunroof of a green Lexus with tinted windows while holding a black gun in his right hand. Jackson pointed the gun at Alberto and Hernandez and told them to give him their wallets or he would shoot them. Alberto, afraid Jackson would use the gun, walked to a spot where Jackson could reach his outstretched hand and gave to Jackson his wallet. Jackson “grabbed the wallet [and Hernandez’s money, then]” “went down right away and the car took off.” After the Lexus drove away, Alberto immediately used his cell phone to call 911.⁴ Alberto told the operator he and his cousin had just been robbed and police officers arrived “less than 30 minutes” later. However, before officers arrived, Hernandez had decided to drive home.

When the officers arrived, they asked Alberto if he would go with them to an area approximately four blocks away to view a suspect. Alberto agreed to go and, when he viewed Jackson and two other individuals from inside a police car, Alberto indicated Jackson was the man who had taken his wallet.

Between two and three hours after he had been robbed, two police officers came to Hernandez’s home. One of the officers read to Hernandez an admonition, then showed to him “a set of six different photographs.” While the incident was still “fresh in [his] mind,” Hernandez selected one of the photographs and indicated it was of the gunman. On the photograph, Hernandez wrote: “This is the person that pointed at me with the weapon and took my money. I recognize him because of his look.” When Hernandez was shown a second set of photographs, he circled one, then placed his initials, the date and the time next to it. Hernandez picked the person who appeared to have the “same

⁴ The 911 call was in Spanish while the transcript of the call was in English. The parties agreed to call as a witness Alberto, the individual who made the call, to lay a foundation with regard to its contents, then obtain a certified transcript of the call. When he was called to the stand and the 911 tape was played for him, Alberto testified that the tape was, in fact, of his voice. After the trial court then signed an order indicating she was to do so, one of the court interpreters agreed to translate the 911 tape from Spanish to English.

look that the gunman had when [Hernandez was] robbed.” Hernandez, however, could not remember if the man who robbed him had any scars or tattoos. Everything had happened so fast that Hernandez did not get a good look at the robber’s face. He did, however, notice that the man who took his money was African-American. With regard to the car, all he could remember “was that it was black.”

Los Angeles Police Officer Brandon Alvarez and his partner, Officer Richard Campos, were on patrol for the Southwest Division on the evening of January 22, 2012. At approximately 8:00 p.m., the officers received a call regarding an armed robbery which had occurred near the intersection of Westhaven and Harcourt. The call also described the vehicle involved as a green, two-door Lexus and the perpetrators as “two male [B]lacks.”⁵ As the officers were only approximately five blocks from the site of the robbery, they drove toward the area and, as they approached the intersection, saw a car which “matched the description of the suspect vehicle.” Alvarez turned his patrol car onto Hillcrest, pulled up behind the Lexus and “put [his] spotlights on the vehicle.” The passenger seated in the front seat of the car then immediately got out and ran west, through an apartment complex at 2815 Hillcrest. When the car then quickly “sped off,” Alvarez followed it as it made several right hand turns. After losing sight of the vehicle for a moment, Alvarez and his partner turned back onto Hillcrest where they again saw the Lexus. After the Lexus made a sharp right hand turn into the driveway of the apartment complex at 2815 Hillcrest, the officers followed and “did a felony stop on the vehicle.” As Alvarez and Campos got out of their patrol car, other officers arrived on the scene to provide assistance. The driver of the car was detained and later identified as Jackson. One other person was found in the car, a woman who had been sitting in the back seat.

When he conducted a search of Jackson, who was wearing a white T-shirt, Alvarez found no money. However, money was “deposited with him [when he was booked] into the jail.”

⁵ Alvarez later described the Lexus as “dark blue.”

After Jackson and the woman who had been sitting in the back seat were taken into custody, a third individual, a male, was “detained as a possible suspect.” He, too, was wearing a white T-shirt. After Jackson and the other two individuals had been taken into custody, Alvarez and other officers searched the area “for any evidence of the crime.” However the officers recovered neither a wallet nor a gun.

Officer Campos looked over the Lexus used during the robbery. He noted that the car had tinted windows and a sunroof. Campos determined the sunroof was “a mechanical type” which “goes up, . . . then . . . actually slide[s] [into] the roof.”

Los Angeles Police Patrol Officer Tynisha King was on duty as a patrol officer on January 22, 2012. At approximately 8:00 p.m. that evening, King responded to a call regarding the investigation of an armed robbery. King proceeded to the area of Westhaven and Harcourt, where she interviewed the victims. King spoke with Alberto in person, then interviewed Hernandez by telephone. After speaking with both men, King assisted with “the field showup.” In conducting such a showup, the officer transports the victim to an area where a suspect is being held. The officer then admonishes the victim, informing him or her that the suspect is “in custody temporarily and that the [victim] needs to inform [the officer] whether or not they are the person who . . . committed the crime.” If the individual being held is not that person, then the victim needs to inform the officer of that fact.

King first admonished Alberto, who then, while sitting in a patrol car viewed Jackson from a distance of approximately 20 feet. Alberto apparently also viewed the individual who had run from the car as well as the woman who had been riding as a passenger in the rear seat. Alberto identified Jackson, who was standing in the street being lit by lights from King’s patrol car and street lights, as the individual who had robbed him. In addition, Alberto positively identified the vehicle in which Jackson had been riding when he committed the robbery. When King was later able to get closer to the Lexus used during the robbery, she characterized it as dark blue with two doors. When she had initially seen the car, it was being driven by Jackson and there had been a woman seated in the rear passenger seat.

Later that evening, Officer Campos went with a detective to do a follow-up interview with Hernandez. Campos, speaking in Spanish, admonished Hernandez, then showed him a group of six photographs usually referred to as a “photo lineup.” After indicating he understood the admonishment, Hernandez circled a photograph of Jackson and indicated Jackson had been the man who had robbed him.⁶

Los Angeles Police Officer Brendan Flynn was working as a patrol officer for the Southwest Division on the evening of January 22, 2012. He responded to a location on Hillcrest Drive, where he impounded a Lexus automobile. Flynn conducted an inventory search of the car, completed “an impound face sheet,” then had the car towed. During his search of the vehicle, Flynn found neither a gun nor a wallet.

b. *Defense evidence.*

Cleotil Lewis is Jackson’s mother. On January 22, 2012, Lewis had held a baby shower in a recreational center at a park near her home. At approximately 8:00 p.m., after they had packed all the items from the shower into their cars, both Lewis and Jackson left the park. Lewis was driving a minivan and her aunt and cousin were riding with her. Jackson was driving a Lexus. The only other person in his car was his girlfriend, Jasmine. Jackson followed Lewis as she drove back to her home at 2815 Hillcrest Drive. When they arrived at the house, both Lewis and Jackson pulled their cars into the driveway and everyone began unloading the vehicles. As he was bringing items from his mother’s car into her house, Jackson’s aunt asked him if he could go to the store and buy her a package of cigarettes. Jackson had left the house less than five minutes earlier when Lewis saw a bright light outside. When she looked out the window, she saw that a police car had pulled into her driveway behind Jackson’s car. Lewis stepped out of the house and heard two officers, both of whom had drawn their guns, yelling, “ ‘Put your hands out [of] the car now.’ ” Both Jackson and his girlfriend got out of the car and, in response to an officer’s instructions, laid down on the ground.

⁶ The photograph of Jackson was apparently the only one which showed a man with tattoos on his neck.

Just as a number of additional officers arrived at the scene, a police officer handcuffed Jackson and escorted him to the front of the house. In the meantime, a number of officers searched in and around the car. Although Lewis attempted to find out what was going on, none of the officers would speak with her at that time. Jackson was taken out to the middle of the street, a patrol car pulled up, shined its lights on him and Lewis then heard a voice on a “walkie-talkie” indicate that Jackson “was him.” After Jackson was placed in the back of a patrol car, a police officer approached Lewis and told her Jackson was being taken into custody for robbery. Lewis attempted to explain to the officer that it could not have been Jackson because he had been with her “all day.”

In addition to her son, Richard Jackson, a young man named Terrence Jackson was at Lewis’s home that night. According to Lewis, Terrence⁷ had been at her house all evening. When police officers then asked Lewis if any other men were inside her home, she told them about Terrence and the officers asked her to have him come outside. Terrence, who was wearing a white T-shirt and black jeans, stepped outside and was escorted to the center of the street where a patrol car shined its lights on him. An officer then told Lewis that Terrence was being placed under arrest because “he was being resistant[] and he was on parole.”

Lewis testified that she, herself, had been convicted of a felony involving a crime of moral turpitude in 1998.

2. Procedural history.

In an information filed September 10, 2012, Richard Deon Jackson was charged with two counts of the serious (§ 1192.7, subd. (c)) and violent (§ 667.5, subd. (c)) felony of second degree robbery (§ 211). It was further alleged that, with regard to each of the robberies, Jackson had personally used a firearm, a handgun, within the meaning of section 12022.53, subdivision (b), causing the offenses to become serious felonies within the meaning of section 1192.7, subdivision (c)(8) and violent felonies within the meaning

⁷ Again, we refer to Terrence by his first name not out of any disrespect, but to avoid confusion.

of section 667.5, subdivision (c)(8). In addition, it was alleged Jackson personally used a handgun within the meaning of sections 12022.5, 1192.7, subdivision (c) and 667.5, subdivision (c) and that any “prison custody time [imposed] for the above offense[s] [was] to be served in state prison pursuant to . . . section 1170[, subdivision] (h)(3).”

At arraignment held on September 10, 2012, Jackson entered pleas of not guilty to the crimes alleged in counts 1 and 2 and denied all the remaining allegations. On December 7, 2012, the case was transferred to Department 124 for a trial. On December 10, 2012, after the parties informed the court they were unable to reach a disposition, the matter was called for a jury trial.

After the prosecution presented its case, defense counsel made a motion for dismissal of the action pursuant to section 1118.1. The trial court denied the motion, indicating the prosecution had presented sufficient evidence of each element of each offense to sustain convictions on appeal.

Before defense counsel called as a witness Jackson’s mother, Cleotil Lewis, counsel moved that her 1998 robbery conviction be excluded as too remote to be probative and, in this instance, extremely prejudicial. The prosecutor argued the offense was Lewis’s only “impeachable conviction” and involved moral turpitude. The trial court determined that “since [it was for] the identical crime, [it was] going to have to be sanitized.” The court continued, “I have done the balancing. I think it is [probative to her credibility] that she has a felony conviction [and, sanitized,]” “I am going to allow it.” The trial court indicated the prosecutor could refer to the prior conviction as “a felony involving moral turpitude.”

After Jackson’s mother testified in his behalf, the trial court informed Jackson he had the right to testify. The court explained: “It is your personal right. You get to make the decision. It is not your attorney’s decision. It’s your decision. You consult with your attorney, but it is your decision” Jackson indicated he understood his right, but was choosing not to exercise it. He did not testify.

The matter was given to the jury on December 14, 2012. The jurors deliberated for several hours, then submitted to the court the following question: “We as the jury would like to know if we go by the witness’s testimony or by what the [E]nglish translator repeated?” After both parties agreed that the proposed response was appropriate, the trial court wrote to the jury: “You must rely on the translation provided by the interpreter.” The following day, the jury submitted to the trial court the following inquiry: “We would like to know if Julio [Hernandez] ever identified the defendant in court?” After consulting with counsel, the trial court responded to the jury’s question in writing, indicating, “You, the jury, must decide what the facts are.”

On the afternoon of December 17, 2012, the jury indicated it had reached verdicts. With regard to count 1, the jury’s verdict read: “We, the [j]ury in the above-entitled action, find the Defendant, Richard Deon Jackson, guilty of the crime of SECOND DEGREE ROBBERY of Alberto Hernandez, in violation of . . . Section 211, a [f]elony [¶] We further find the allegation that the said defendant, Richard Deon Jackson, personally used a firearm, to wit: a handgun, within the meaning of . . . Section 12022.53[, subdivision (b)] to be true.” As to count 2, the jury indicated: “We, the [j]ury in the above-entitled action, find the Defendant, Richard Deon Jackson, guilty of the crime of SECOND DEGREE ROBBERY of Julio Hernandez, in violation of . . . Section 211, a [f]elony [¶] We further find the allegation that the said defendant, Richard Deon Jackson, personally used a firearm, to wit: a handgun, within the meaning of . . . Section 12022.53[, subdivision] (b) to be true.”

At proceedings held on February 21, 2013, the trial court indicated it had received a sentencing memorandum from each of the parties and had reviewed Jackson’s probation report. Although the trial court considered Jackson’s youth⁸ and the fact that he is a straight “A” student, it also considered that he had “engaged in violent conduct which [posed a] serious [threat] to society.” Under these circumstances, the trial court determined the mid-term of three years for Jackson’s robbery as alleged in count 1 was

⁸ Jackson was 20 years old at the time of sentencing.

appropriate. The court then, pursuant to section 12022.53, subdivision (b), imposed a 10-year enhancement for Jackson's use of a firearm during the offense. With regard to the robbery alleged in count 2, the trial court imposed a concurrent term of three years in prison and a concurrent term of 10 years for his use of a firearm. The court imposed concurrent terms because the robberies occurred during "one course of conduct." In total, Jackson was sentenced to 13 years in state prison. The trial court recommended that Jackson be sent to fire camp, then awarded him presentence custody credit for 398 days actually served and 59 days of good time/work time, for a total of 457 days.

The court ordered Jackson to pay an \$80 court operations assessment (§ 1465.8, subd. (a)(1)), a \$60 criminal conviction assessment (Gov. Code, § 70373), a \$10 crime prevention fine (§ 1202.5), a penalty assessment at a rate of \$28 (§ 1464, subd. (a); Gov. Code, § 76000), a \$6,240 restitution fine (§ 1202.4, subd. (b)), a stayed \$6,240 parole revocation restitution fine (§ 1202.45) and, pursuant to stipulation, \$70 in restitution to Alberto Hernandez and \$110 in restitution to Julio Hernandez.

Jackson filed a timely notice of appeal on April 10, 2013.

CONTENTIONS

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed November 20, 2013, the clerk of this court advised Jackson to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.